

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 05-01804 WHA

Consolidated Cases:
No. C 05-02502 WHA
No. C 05-02501 WHA
No. C 05-02792 WHA

IN RE FUNERAL CONSUMERS

Antitrust Litigation.

**STIPULATION AND ORDER
MODIFYING TIME FOR DEFENDANT
STEWART ENTERPRISES TO MAKE
INITIAL DISCLOSURES**

Pursuant to Local Rules 6-1(b) and 6-2, this joint stipulation is entered into between plaintiffs Funeral Consumers Alliance, Inc., Gloria Jaccarino Bender, Anthony J. Jaccarino, John Clark, Donna Sprague, Nancy Helman, Ira Helman, Donald Sprague, Robert Chitel, Francis Rocha, Marsha Berger, Maria Magsarili, and Tony Magsarili (collectively, “plaintiffs”), and defendant Stewart Enterprises, Inc. (“Stewart”), by and through their respective attorneys of record, with respect to the following facts:

WHEREAS, in the Consolidation Order, Case Management Order and Referral to Magistrate Judge for Mediation/Settlement (“Case Management Order”), dated August 4, 2005, the Court ordered that “All initial disclosures under FRCP 26 must be completed by September 2, 2005, on pain of preclusion under FRCP 37(c);” and

WHEREAS, on Monday, August 29, 2005, Hurricane Katrina devastated the New Orleans area, inflicting serious wind damage and widespread flooding; and

WHEREAS, Stewart’s headquarters office is located in Jefferson, Louisiana, just outside New Orleans, and Stewart’s principal outside law firm, Jones, Walker, Waechter,

Poitevent, Carrere & Denegre, LLP ("Jones Walker"), is located in downtown New Orleans;
and

WHEREAS, in the hours leading up to Hurricane Katrina, all the known officers and employees of Stewart living and working in and around New Orleans evacuated the area, as did the lawyers at the Jones Walker firm, including David G. Radlauer, M. Richard Schroeder, and Mark A. Cunningham, the principal lawyers working on this case (as to whom *pro hac vice* applications have been granted); and

WHEREAS, as a result of the storm, electricity and other basic services are not available in New Orleans and the surrounding area, telephone and cell phone communications have been seriously disrupted, e-mail and computer systems are inoperable, and it is not known when such services will be restored; and

WHEREAS, because of the devastation and disruption in basic services, it has not been possible to communicate with employees or representatives of Stewart or (with the exception of Mr. Radlauer) with lawyers at the Jones Walker firm, and it is not known when such communications will again be possible; and

WHEREAS, civil authorities in New Orleans have urged the populace not to return to the City or the surrounding area until relief operations are more advanced; and

WHEREAS, the devastation and disruption caused by the storm, as well as the inability to communicate with Stewart, have made it impossible for Stewart or its attorneys to comply with the September 2 initial disclosure schedule set forth in the Case Management Order; and

WHEREAS, Stewart's local counsel has communicated with Plaintiffs' lead counsel, and, in light of the foregoing, Plaintiffs' lead counsel is agreeable to the following proposed modification in the schedule for initial disclosures as to Stewart; and

WHEREAS, it is not anticipated that the proposed modification to the schedule for initial disclosures as to Stewart will have any material effect on the overall schedule for the case as set forth in the Case Management Order;

NOW, THEREFORE, the parties to this Joint Stipulation hereby agree as follows, subject to approval by the Court:

1 1. Defendant Stewart shall have a one-week extension of time, to and
2 including September 9, 2005, within which to make preliminary Initial
3 Disclosures pursuant to FRCP 26(a), based on information available to Stewart
4 and its attorneys at the time given the devastation and disruption in the New
5 Orleans area caused by Hurricane Katrina.

6 2. Defendant Stewart will use its best efforts to supplement its
7 preliminary Initial Disclosures by September 16, 2005, provided that, depending
8 on the progress of recovery efforts in the New Orleans area, including efforts to
9 restore electricity, telephone and cell phone communications, and other basic
10 services, if it appears that Stewart and its attorneys will be unable despite their
11 best efforts to comply with the September 16 date, local counsel for Stewart will
12 communicate with Plaintiffs' counsel on or before September 13, 2005 to discuss
13 such further modifications of the schedule as may be necessary.

14
15 Dated: August 31, 2005

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